

Mr. Kevin Smardz  
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November 13, 1998

Secretary  
Federal Communications Commission  
Washington, D.C. 20554

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Dear Sirs,

The following is a motion against the NOTICE OF PROPOSED RULE MAKING adopted September 21, 1998 concerning the request of an amendment of the Television Table of Allotments to reflect Channel 17 as reserved for non-commercial education use and Channel 23 as non-reserved. (MM Docket No. 98-175 Amendment of Section 73.606(b), RM-9364 Table of Allotments.)

In 1987, when WNEQ-TV signed on the air, Western New York Public Broadcasting (WNYPB) announced that a second public station in Buffalo would enable them to better respond to the needs of their viewers. In light of the pending change of license status and sale to a commercial organization, I feel that a FCC approval of the proposed action would not in the public's best interests.

A little more than a decade ago, it was a high priority of WNYPB to secure the rights to Channel 23. Mike Collins, president of WNYPB at the time, stated that an additional station would allow for the expansion of service that would offer Western New Yorkers more viewing choices. "There are some very good programs that never get on the air," said Collins in a 1986 interview in the Buffalo News. In yet another interview Collins states, "One of the most often expressed needs of our viewers in recent years has been to see programs which we were unable to carry on Channel 17 due to the limited number of hours in a broadcast week." This directly contradicts the statement in WNYPB's filing which states, "It has been difficult to program WNEQ-TV Channel 23 on any extended hourly basis." With the pending sale of Channel 23 as a commercial station after a change in license classification, Channel 17 will not be able to provide the room for educational programming that

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is in the best interest of the community. It has already been documented by WNYPB that Channel 17 does not have the room for all of the available programs that it would like to run. In August 1998, Channel 17's Director of Broadcasting Ron Santora told the Buffalo News that the station would not have room for the children's television show "Noddy." Not only is this the latest children's offering from PBS, but it was created by a native Buffalonian. What other quality programs will go unseen by local viewers if a show created by a member of our own community can't find room on Channel 17?

Also, WNYPB "plans to create an endowment fund from the sale of WNEQ to produce shows and acquire additional programs." This seems contradictory. First, they say there is not enough programming to operate Channel 23 and then they say they are buying more programming for an over-crowded Channel 17. It begs the question, Where are they planning to run these new programs they are producing and buying?

WNYPB contends that the operation of Channel 23 has been expensive and that funds and resources have been drained from Channel 17. WNYPB's operating expenses for 1998 are \$9,625,702. The operating expenses of WNEQ Channel 23 are listed as \$159,015. This does not seem, as the petitioner asserts, to be an expensive part of its operation. This is less than 2% of WNYPB's budget. It does not appear that funds have been drained from WNEQ.

Faced with the future sale of Channel 23 to a commercial entity, I am concerned about the past use of government funds to build, program and operate WNEQ. WNYPB has asserted in recent statements that no government monies were used in the development and operation of WNEQ. This seems not impossible due to the fact that both Channel 17 and Channel 23 share the same facilities. In a 1998 financial statement (June 30, 1998, 1997) audited by KPMG's Peat Marwick, operating expenses of WNEQ are listed as \$159,015. This figure takes into account many categories including salaries and wages, benefits, taxes, transmitter power, maintenance and repairs. When compared to the long list of Channel 17's categories, a station that WNYPB admits receives direct government funds, it seems only natural that a sharing of expenses has occurred. In addition, the idea that no

government funds were used seems to contradict a statement made prior to the station sign-on. In news articles written during station construction, a \$250,000 grant was provided by the state. This, in my opinion, would certainly be classified as a source of government funds. In 1987, WNYPB also received a NTIA grant to purchase a new TV transmitter for Channel 17 at a cost of \$1,200,000. The old transmitter was retuned for use on Channel 23. All be it indirectly, that grant greatly benefited WNEQ. As a taxpayer, I feel that this past public investment will only benefit a commercial outlet with little or no benefit to our communities future educational and cultural development.

I am also concerned by the deceptive public relations strategy that WNYPB has conducted concerning the change of license and future sale of Channel 23. Despite their statement in the Notice of Proposed Rule Making that the "Board of Trustees have voted in favor of a proposal to commence the negotiating process to determine an appropriate assignee for Station WNEQ-TV," the WNYPB has identified the buyer and established the purchase price. Confident that the FCC will make a ruling that will comply with their plans, WNYPB has had plans in place to sell the station as commercial for many months. The plan to sell Channel 23 as a commercial entity was divulged in May 1998 and the sale to Sinclair Broadcast Group was announced in the Buffalo News on August 22, 1998. According to public newspaper and magazine reports, it seems like the change of license is a done deal and the sale of the station to a commercial outlet will proceed problem free. In a letter sent to members of Western New York Public Broadcasting, President and CEO Donald K. Boswell announced the agreement to sell WNEQ to Sinclair Broadcast Group. Schedule changes have already taken place including the removal of programming from Channel 23 to more undesirable slots on an already crowded Channel 17.

I feel that this lack of truthful public relations has hindered public debate in Western New York about this change and that WNYPB is not receiving the proper feedback from the public when making this historic move. The need for public debate on this issue is important. In this age of increased commercialism of our society, the FCC should take a close look at the ramifications of the proposed rule making before proceeding. Once we loose a public broadcasting station our community will never be able to regain this important outlet for news, education

and culture.

If WNYPB was truly interested in serving the public interest, they would attempt to locate a buyer to run WNEQ as a non-commercial station. However, WNYPB may not want competition from another non-commercial entity for public funds.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Kevin Smardz". The signature is fluid and cursive, with the first name "Kevin" and last name "Smardz" clearly distinguishable.

Kevin Smardz  
Southtowns Christian Center